

Cause No. 42421-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

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DIVISION II

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STATE OF WASHINGTON

BY _____
DEPUTY

LEWIS COUNTY CIVIL SERVICE)
COMMISSION, LEWIS COUNTY)
SHERIFF'S DEPARTMENT, and)
LEWIS COUNTY,)

Appellants)

vs.)

HAROLD SPROUSE,)

Respondents)

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page(s)
Table of Contents.....	i
Table of Authorities.....	ii-iii
I. Summary of Argument.....	1
II. Argument.....	2-24
a. The Disgruntled Deputy Attempts to Recast His Conduct By ignoring the Record Before the Lewis County Civil Service Commission.....	2-11
b. Respondent Improperly References the Administrative Procedure Act, RCW 34.05 <i>et seq.</i> as the Standard of Review and Improperly Grafts Collective Bargaining Language Into the Review Claiming a Higher Standard Than Cause Applies to this Appeal.....	11-14
c. Personnel Actions are Exempt From Whistle Blower Claims.....	14-16
d. Constitutional Rights Are Not Infringed When A Governmental Employee Takes Action They Assert are Within the Scope of Their Duties.....	16-24
III. Conclusion.....	24-25
Appendix	

TABLE OF AUTHORITIES

<u>Table of Cases</u>	<u>Page</u>
<i>Arnett v. Kennedy</i> , 416 U.S. 134, 162-63, 94 S.Ct. 1633, 1648-49, 40 L.Ed.2d 15 (1974).....	18
<i>Benavides v. Civil Service Comm'n</i> , 26 Wash.App. 531, 613 P.2d 807 (1980).....	11, 12
<i>Civil Service Com'n of City of Kelso v. City of Kelso</i> , 137 Wash. 2d 166, 172-176, 969 P.2d 474, 478 - 480 (1999).....	12
<i>Garcetti v. Ceballos</i> , 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006).....;	17
<i>Garrity v. New Jersey</i> , 385 U.S. 493, 87 S.Ct. 616, 620, 17 L.Ed.2d 562 (1967).....	21
<i>Gertz v. Robert Welch, Inc.</i> , 418 U.S. 323, 340, 94 S.Ct. 2997, 3007, 41 L.Ed.2d 789 (1974).....	17
<i>Hilltop Terrace Homeowner's Ass'n v. Island County</i> , 126 Wash. 2d 22, 29-30, 891 P.2d 29 (1995).....	10
<i>Huppert v. City of Pittsburg</i> , 574 F.3d 696 (9 th Cir. 2009).....	18
<i>Johnson v. Multnomah County</i> , 48 F.3d 420, 426 (9th Cir. 1995)...	18
<i>Los Angeles Police Protective League v. Gates</i> , 579 F.Supp. 36, 39 -40 (D.C.Cal.,1984).....	10
<i>Pickering v. Bd. of Education</i> , 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968).....	17
<i>Riggins v. Housing Auth. of Seattle</i> , 87 Wash.2d 97, 100, 549 P.2d 480 (1976).....	11, 12
<i>Waters v. Churchill</i> , 511 U.S. 661, 671, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994).....	17

Statutes

RCW 9A.72.110.....	2
RCW 9A.42.120.....	2
RCW 34.05.....	11
RCW 34.05.010(2).....	11
RCW 34.05.030.....	12
RCW 41.08.....	15
RCW 41.12.....	15
RCW 41.14.....	12, 14, 15
RCW 41.14.120.....	11, 12, 21
RCW 41.56.....	15
RCW 41.59.....	15
RCW 42.41.....	14, 15
RCW 42.41.020(1)(b).....	15
RCW 42.41.050.....	15
RCW 53.18.....	15
RCW 54.04.170.....	15
RCW 54.04.180.....	15

I. SUMMARY OF ARGUMENT

The Lewis County Civil Service Commission correctly found that the Lewis County Sheriff's Office properly terminated Respondent, the ("Disgruntled Deputy") in good faith and for cause when it determined the Disgruntled Deputy made a false and vindictive or retaliatory report of criminal conduct against the Lewis County Sheriff's administration that irreparably destroyed the trust and confidence in him and rendered him unfit to continue as a deputy. The superior court erred when it set aside the unanimous decision of the civil service commission and substituted its judgment for the body that heard the evidence, observed the witnesses and made the proper determination that the continued employment of the Disgruntled Deputy in the Sheriff's Office was not in the best interests of the Sheriff's Office or the community it serves. The decision of the superior court should be reversed and the findings of the Lewis County Civil Service Commission reinstated upholding the termination of the Disgruntled Deputy.

II. ARGUMENT

a. **The Disgruntled Deputy Attempts to Recast His Conduct By Ignoring the Record Before the Lewis County Civil Service Commission.**

Only after the Disgruntled Deputy received a timed letter of reprimand for failing to properly secure an official report did he raise concerns about the Lewis County Sheriff's Office investigation into the improper release of that report. Report of Proceedings 38, Lines 3-19; RP 44, ln 6-RP 44, ln. 5; RP 252, ln. 20 – RP 253, ln. 6; Ex. (Sheriff's Ex. 4).¹

The Disgruntled Deputy left a police report unsecured where it was reviewed by his adult son and his son's adult girlfriend, both of whom have felony convictions. RP 103-05. The Disgruntled Deputy made a report to the Lewis County Prosecuting Attorney's office falsely alleging the Sheriff's Administration committed the felonies of Intimidating a Witness RCW 9A.72.110 and Tampering with a Witness RCW 9A.72.120. (RP 39, lins. 14-17; RP 75, lns. 16-25).

¹ Reference to the Report of the Proceedings Before the Superior Court shall be denominated SRP1 for verbatim report of proceedings on January 13, 2011 and SRP2 for superior court proceedings on July 15, 2011 and RP for the Verbatim Report of Proceedings (RP) Before the Civil Service Commission on April 19, 2010 and RP2 for RP of April 20, 2010).

Before the Disgruntled Deputy made the false allegations of criminal conduct he admitted he was “pissed” about getting the letter of reprimand. RP 38.

Commander Aust and Chief Brown interviewed the Disgruntled Deputy’s son and his girlfriend on September 24, RP 107. The disgruntled deputy received the reprimand on October 14. Sheriff’s Ex. 4. He did not make the allegation of witness tampering to the on call deputy prosecutor until October 24, 2009. RP 30. The Disgruntled Deputy asserts there was no connection between his baseless report of witness tampering and his minor letter of reprimand. Respondent’s Brief at page 26. However, he did not advance such allegations until weeks after command staff interviewed the adult felons living on his property and only after receiving his letter of reprimand. He met with his supervisor to share that he was “pissed” he’d been investigated and disciplined. RP 37-40. This timeline, and other evidence, supports the civil service commission’s and the Sheriff’s Office’s conclusion the report had a retaliatory motive.

The Disgruntled Deputy ignored the advice of several supervisors that his allegations did not establish criminal conduct of witness tampering RP 39, ln. 14 – RP 41, ln. 19; RP 42, lns. 5-19; ; RP 77, lns. 3-21; RP 84, lns. 1-9; RP 138, lns. 16-19; RP 260, lns. 15-25; RP 261, lns. 10-20; RP 262, lns. 19 – RP 263, ln. 17; RP 189, lns 8-23. The Disgruntled Deputy

was angry RP 38, Lines 3-19; RP 44, ln 6-RP 44, ln. 5; RP 252, ln. 20 – RP 253, ln. 6 and he abused his position to make unfounded, official allegations of criminal behavior. (RP 31, lns. 6-14)

The Disgruntled Deputy himself acknowledged his behavior was not appropriate: “Again, my whole intent through the whole thing was to go up the chain of command and do it the way it’s supposed to be done.” (Sheriff’s Ex. 3, pg. 10, last paragraph). “I did not care what the outcome was...I wanted to bring pressure down on the [Sheriff’s] department.” RP 250, lns. 24-25.

The Disgruntled Deputy seeks to shift the focus of the appeal to an issue involving the Sheriff’s son, grandson and the grandson’s mother in which Respondent was only marginally involved. The Disgruntled Deputy’s own Brief of Respondent indicates that he was not involved in the issue with the Sheriff’s son, his new baby and the young mother of the baby beyond the initial call on March 16. Respondents brief, pg. 2. RP 90. Mr. Sprouse had played a minor role in that incident and had offered to the girl’s parents to pick up the girl and return her to them. The parents refused that offer. (RP 239, 259).² Any factual information Mr. Sprouse

² Four days later, on Friday night, the mother decided she wanted her daughter returned home. The daughter said that if she was forced to return home, she would run away that night. This situation required Child Protective Services intervention at a supervisor’s level. No CPS supervisors were available on Friday night. The Sheriff’s office, with the father’s permission, set up a time for CPS and Sheriff’s Office personnel to respond to

had about that incident would have been exculpatory, Mr. Sprouse would have been called as a defense witness. Mr. Sprouse was told by Chief Seiber to handle the situation just like he handled it, if the parents wanted their daughter picked up and brought home, pick her up and bring her home. RP 237, 239. The parents declined and that was the end of his involvement. RP 239, 258-59. None of Mr. Sprouse's actions during the initial call were ever questioned and he had no further involvement.

When the Disgruntled Deputy met with Sgt. Smith, he was unable to articulate any alleged criminal behavior by Sheriff's Office Administrators. RP 137, Ins. 16 PR 138-139; Sheriff's Ex. 10. Sgt. Smith informed the Disgruntled Deputy that what he was reporting did not support allegations of witness tampering or other unlawful behavior. RP 138, In 16-19. Sgt. Smith verified with the Disgruntled Deputy that nobody directly or indirectly told him to lie, exaggerate, or tell a specific version of events to the Washington State Patrol investigators. Sheriff's Ex. 10, Investigative notes re: October 24, 2009; RP 138. The Disgruntled Deputy was further questioned if he was told to evade, avoid or otherwise absent himself from meeting with WSP investigators or any meeting, hearing or future hearing. He admitted that no such actions occurred.

the home at which the girl was staying on Monday morning. This alleviated the possibility of her running away and allowed her to stay with her newborn baby until Monday morning. RP 110-11, 90-92.

(Id.)(Sheriff's Ex. 10, Investigative notes re: October 24, 2009). The Disgruntled Deputy acknowledged before the civil service commission nobody told him to lie, change his story or avoid any inquiry. RP 264.

The conduct involved in the events related to the mother of the Sheriff's grandson was not the principal focus of the civil service commission hearing and the factual inaccuracies of the reports relating to the actual events were never fully explored by the civil service commission.

What was explored were the facts that led the Lewis County Civil Service Commission to conclude that: Mr. Sprouse filed the false complaint "deliberately and in retaliation for the disciplinary action imposed on him for not properly securing the incident report read by his son and his son's girlfriend. It is our further conclusion that this action caused a groundless criminal investigation to occur and was an abuse of his position as a law enforcement officer. This action ... irreparably eroded the confidence that the Lewis County Sheriff and his command staff have in Deputy Sprouse." Civil Service Decision, pgs 6-7.

The civil service commission concluded Respondent: (1) Knowingly made a false complaint, (2) he did it deliberately and in retaliation for the disciplinary action. (3) Respondent's conduct caused a groundless criminal investigation. (4) Respondent's conduct was an abuse

of Respondent's position as a deputy sheriff. (5) Respondent's conduct irreparably eroded the confidence the Lewis County Sheriff and the Command Staff had in Respondent. *Id.*

Respondent asserts that nothing in the record indicates that Disgruntled Deputy was disruptive. Respondent's Brief at pg. 12. That assertion ignores the record before the civil service commission.

Commander Aust RP 102 testified that the Disgruntled Deputy's allegation he engaged in witness tampering was ridiculous. RP112-13. Chief Stacy Brown RP 114 testified she felt "shock and anger" at being accused of engaging in a felony by the Disgruntled Deputy. She was angered her integrity was questioned. RP 119. She was concerned about the impact of such a report on the relationships with the Washington State Attorney General's Office and the State Patrol because accusing a police officer of a crime is a serious issue. RP 119. She said that the false accusation against her impacted her relationship with the Disgruntled Deputy. RP 120. She regarded the Disgruntled Deputy's behavior as disrespectful. RP 120. Chief Brown testified that an allegation of criminal conduct against the department coming from a deputy is more serious than if it had not been made by a deputy sheriff. RP 123-24. Chief Brown felt that the Disgruntled Deputy's allegation would have a detrimental effect for a long time. RP 124. She believed that such an

allegation by the Disgruntled Deputy may cause the public to question the Sheriff's Office's integrity and impede the Office's ability to carry out their mission. RP 125.

Chief Seiber described the Disgruntled Deputy's false allegations of the Sheriff's Administration engaging in felonies as "Very serious. Again, making false statements against your brother being in the law enforcement career I think it's the worst case scenario." RP 180.

Chief of Staff Walton felt the false allegations of the Disgruntled Deputy undermined the mission of the Sheriff's Office. RP 189-90. Chief Walton was concerned that the lawlessness of the false allegation against the command staff by the Disgruntled Deputy could translate into similar retaliation against a member of the public if a citizen on the road "pisses him off." RP 196. Chief of Staff Walton believed that the Disgruntled Deputy's conduct in making the false report RP 199-200, Ex. 12 had caused irreparable damage and caused him to lose the backing of his work group. RP 201. It also had the potential to impact relationships with the State Patrol, Prosecuting Attorney and State Attorney General's Office. RP 201-02. The Disgruntled Deputy admitted he did not care about the outcome, he made the allegation to bring down pressure upon the Sheriff's Office. RP 250, Ins. 24-25. Even the Disgruntled Deputy's union indicated that they were trying to get him under control. Sheriff's Ex. 24.

Sgt. Smith testified that the Disgruntled Deputy's false allegations of criminal misconduct against his superiors damaged the mission of the Sheriff's Office. RP 151-52. The Disgruntled Deputy's conduct of lodging false criminal charges gave rise to a concern regarding how he might treat a citizen. RP 154.

The Lewis County Civil Service Commission had the opportunity to hear the witnesses, observe their demeanor and reach their conclusion that the Disgruntled Deputy had vindictive and retaliatory motives and his continued retention as a Sheriff's Deputy was not in the community's best interest. Civil Service Decision.

The Disgruntled Deputy claims the fact that the investigation of the unlawful release of the report, a possible felony RP2 2, Ex. 30, was carried out by command staff pushed it into witness intimidation because that was unusual. Respondents Reply Brief at 15. However, that ignores the testimony of Chief of Staff Walton that it was not appropriate for Sergeants to investigate because of their potential involvement in the release of the report. RP 211.

The Disgruntled Deputy asserted that the directive not to speak about the issue until he was interviewed was further evidence of witness tampering. Respondent's Brief, pg. 21. However, that was usual and customary practice in the Sheriff's Office. RP 270, ln. 1-19. A fact the

Disgruntled Deputy should have been aware due to his position as a member of the executive board and an officer in his union. RP 229. The Disgruntled Deputy's guild representative RP 265 testified that the practice of advising a subject of an investigation not to discuss the issue with anyone other than a guild representative had been in effect since at least 2002. RP 270. The Disgruntled Deputy's disingenuousness of characterizing this issue as something sinister further undermines his credibility. The propriety of holding subjects of an investigation to secrecy has long been recognized as appropriate in police internal investigations. See *Los Angeles Police Protective League v. Gates*, 579 F.Supp. 36, 39 -40 (D.C.Cal.,1984)

This Court reviews *de novo* whether the decision below was contrary to law and whether the factual determinations are supported by substantial evidence. *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wash.2d 22, 29-30, 891 P.2d 29 (1995). Substantial evidence is the existence of a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the finding. *Id. at 34*.

Substantial evidence supports the Lewis County Civil Service Commission's finding that "That right [to report a crime], however, does not extend to a vindictive or retaliatory report to the Lewis County Prosecutor's Office that has no basis in fact, and we, after considering all

the evidence in the case, have determined that that is what occurred here.”
Decision After Hearing, pg. 6, lns. 8-11.

Under RCW 41.14.120 the Disgruntled Deputy bears the burden of proving that “...the order of ... discharge made by the commission, ... was not made in good faith for cause, and no appeal shall be taken except upon such ground or grounds.” *Id.* To reverse the Lewis County Civil Service Commission this Court must independently determine the Commission acted not in good faith or arbitrarily, capriciously, or contrary to law. *Benavides v. Civil Service Comm'n*, 26 Wash.App. 531, 613 P.2d 807 (1980).

This Court should uphold the Lewis County Civil Service Commission’s decision as having been supported by substantial evidence, made in good faith and for cause.

b. Respondent Improperly References the Administrative Procedure Act, RCW 34.05 *et seq.* as the Standard of Review and Improperly Grafts Collective Bargaining Language Into the Review Claiming a Higher Standard Than Cause Applies to this Appeal.

Respondent seeks to rely upon the Administrative Procedure Act and to graft the Collective Bargaining Agreement “just cause” standard onto this review. The APA applies only to actions of state agencies clearly involved in statewide programs. *Riggins v. Housing Auth. of Seattle*, 87 Wash.2d 97, 100, 549 P.2d 480 (1976); *see* RCW 34.05.010(2), RCW

34.05.030. State agencies do not include local agencies that are not concerned with statewide programs or are not part of a statewide system. *Riggins*, 87 Wash.2d at 101, 549 P.2d 480. The APA does not govern County Civil Service Appeals which are governed under RCW 41.14 *et seq.*

Under RCW 41.14.120 Respondent bears the burden of proving that "...the order of ... discharge made by the commission, ... was not made in good faith for cause, and no appeal shall be taken except upon such ground or grounds." *Id.* To reverse the Lewis County Civil Service Commission this Court must independently determine the commission acted not in good faith or arbitrarily, capriciously, or contrary to law. *Benavides v. Civil Service Comm'n*, 26 Wash.App. 531, 613 P.2d 807 (1980).

Respondent seeks to assert the language from the Management Rights clause of the Collective Bargaining Agreement that employees may be disciplined for just cause somehow creates a higher burden of proof at the civil service proceeding. *Civil Service Com'n of City of Kelso v. City of Kelso*, 137 Wash.2d 166, 172-176, 969 P.2d 474, 478 - 480 (1999) cited by Respondent does not so hold. That case stands for the proposition that the civil service process is separate and distinct from the remedies under the collective bargaining agreement. This court should reject

Respondent's attempt to twist the holding of that decision to impose a higher burden of proof in this appeal.

Respondent further ignores the provisions of ¶5.8 of the Collective Bargaining Agreement ("CBA") captioned "Civil Service Conflict." Grievant's Ex. 1, pg. 9. A copy of that section of the CBA is attached as an appendix. That provision provides that if there is a conflict between the language of the CBA and the rules and jurisdiction of the Civil Service Commission, the Civil Service Commission shall prevail.

The Civil Service Conflict clause further provides that the employee shall make an election of remedies, either proceed under the CBA or under the Civil Service Rules, but not both. The Disgruntled Deputy's argument that there is somehow a more rigorous "just cause" standard is just another one of Respondent's red herrings which seeks to divert attention from Respondent's false, vengeful and vindictive allegation of a criminal conspiracy by the Lewis County Sheriff's Office administrative personnel from Commanders up through and including the Sheriff. The Civil Service Commission was not distracted from the true nature of the Disgruntled Deputy's false and vindictive conduct nor should this court be manipulated into creating bad law. The continued employ of Respondent would not be in the best interests of Lewis County,

the superior court should be reversed and the commission's decision reinstated.

c. Personnel Actions are Exempt From Whistle Blower Claims.

The Disgruntled Deputy asserts that the letter of reprimand and the investigation into the improper release of the police report was required to be reported by him to the prosecuting attorney. The Lewis County Whistle Blower policy does not include non-discriminatory personnel actions. RP 226. No whistle blower complaint was ever generated. RP 226. "Local Government Whistleblower Protections, RCW 42.41 *et seq.* Those statutes are not applicable because by their own terms they do not relate to personnel actions. Further, there was no factual basis for the allegations of witness tampering or witness intimidation.

The Disgruntled Deputy's criminal allegations against fellow coworkers were so baseless that the investigating agency, the Washington State Patrol initially declined to write a report. The Sheriff's Office had to request documentation of their finding of no misconduct by the Lewis County Sheriff's Office. RP 198-200; Ex. 12 & 13.

"Improper governmental action" does not include personnel actions including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments,

reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the local government collective bargaining and civil service laws, alleged labor agreement violations, reprimands, or any action that may be taken under chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW or RCW 54.04.170 and 54.04.180. RCW 42.41.020(1)(b).

The Whistleblower Statute further excludes any local government that has adopted a program for reporting improper governmental actions. RCW 42.41.050. Lewis County adopted such a program in 2001. Both the State law, RCW 42.41 et. seq. and Lewis County's "Whistleblower Policy" require the report to be made in good faith. The Civil Service Commission concluded that the call was not made in good faith but was a vindictive, retaliatory and false allegation made by the Disgruntled Deputy because he was "pissed" he had received a letter of reprimand RP 38 for allowing a sensitive report to fall into the hands of his son and his son's girlfriend both of whom had felony records. RP 103-104.

Both the state and local whistle blower laws exclude non-discriminatory personnel actions. Both further require reports to be made directly to the Prosecuting attorney, among others and are not triggered by reports to deputy prosecuting attorneys or other subordinate employees. Mr. Sprouse never made a whistleblower complaint and his attempt to

recast it as a whistleblower complaint should be rejected. The fact that he admits he did not care about the results of any investigation but just wanted to bring “pressure” on the Sheriff’s Office underscores the claim was not made in good faith. RP 250, lns. 24-25.

The civil service commission correctly determined the allegation was not made in good faith and justified terminating the Disgruntled Deputy . Civil Service Commission Decision.

d. Constitutional Rights Are Not Infringed When A Governmental Employee Takes Actions They Assert are Within the Scope of Their Duties.

The Disgruntled Deputy asserts that the termination violates his rights of free speech and the right to petition. In order to even entertain that argument, the Disgruntled Deputy calls upon the court to disregard the facts related to his behavior. Mr. Sprouse had only a minor involvement when he responded to the first call and the girl’s mother indicated that they did not want him to take any further action and he ceased to be involved. RP 239, 258-59. He then left a report unsecured, where it was reviewed by two felons. RP 102-104. The Sheriff’s Office investigated how two felons obtained access to that report leaving behind their fingerprints.

The Disgruntled Deputy received a very low level of discipline for that breach of his responsibilities to properly secure the report. Sheriff’s

Ex. 4. The Disgruntled Deputy admits that no person tried to get him to change or withhold his testimony. RP 264. At least two supervisors told him that there was no evidence of witness tampering or witness intimidation. RP 39, ln. 14 – RP 41, ln. 19; RP 42, lns. 5-19; ; RP 77, lns. 3-21; RP 84, lns. 1-9; RP 138, lns. 16-19; RP 260, lns. 15-25; RP 261, lns. 10-20; RP 262, lns. 19 – RP 263, ln. 17; RP 189, lns 8-23. He admitted that he made the call to “bring pressure down” on the Sheriff’s Office. RP 250. He was angry he was reprimanded. RP 38, 44, 252-53.

When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom. See, *e.g.*, *Waters v. Churchill*, 511 U.S. 661, 671, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994) (plurality opinion) (“[T]he government as employer indeed has far broader powers than does the government as sovereign”). Neither the intentional lie nor the careless error materially advances society's interest in ‘uninhibited, robust, and wide-open’ debate on public issues.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340, 94 S.Ct. 2997, 3007, 41 L.Ed.2d 789 (1974).

Garcetti v. Ceballos, 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006) is controlling that conduct the Disgruntled Deputy alleges was part of his duty as sheriff’s deputy is not protected conduct. In *Garcetti* the Supreme Court held that the employer has broad latitude in controlling

speech made by the employee in the course and scope of their duties. *Huppert v. City of Pittsburg*, 574 F.3d 696 (9th Cir. 2009) holds that police officer's statements made in the course of an investigation that was being run by the district attorney into corruption in the Pittsburg Police Department were uttered in the course of their employment and not entitled to protection. This case presents the same situation, the Disgruntled Deputy initiated the baseless report in his official capacity and not as a private citizen.

The 9th Circuit has concluded that recklessly false statements are not *per se* unprotected by the First Amendment when they substantially relate to matters of public concern. Instead, the recklessness of the employee and the falseness of the statements should be considered in light of the public employer's showing of actual injury to its legitimate interests, as part of the *Pickering* balancing test. *Johnson v. Multnomah County, Or.*, 48 F.3d 420, 421 -427 (9th Cir.1995).

See Arnett v. Kennedy, 416 U.S. 134, 162-63, 94 S.Ct. 1633, 1648-49, 40 L.Ed.2d 15 (1974) (stating that the Court had no difficulty in concluding that the *Pickering* balancing test weighed in favor of the government in a case in which an employee made recklessly false allegations of bribe-taking by his superiors). This case is no different than *Arnett*, the Disgruntled Deputy made recklessly false allegations that the

entire Sheriff's administration was engaged in felonious witness tampering and intimidation. Such baseless criminal allegations justify termination. To do anything less would be a disservice to the public and irresponsible.

The Disgruntled Deputy cites the Sheriff Office's manual provision regarding truthfulness (Sheriff's Ex. 26, §01.05.140 11(C)) as being exculpatory. That provision provides "Filing information that proves to be wrong when the member can provide substantial evidence that he or she had no intent to be in error." First, that argument was not advanced before the civil service commission. Secondly, that argument ignores the advice his sergeants provided to the Disgruntled Deputy that the facts he was describing did not amount to witness tampering or witness intimidation. (RP 39, ln. 14 – RP 41, ln. 19; RP 42, lns. 5-19; ; RP 77, lns. 3-21; RP 84, lns. 1-9; RP 138, lns. 16-19; RP 260, lns. 15-25; RP 261, lns. 10-20; RP 262, lns. 19 – RP 263, ln. 17; RP 189, lns 8-23). Thirdly, it ignores the civil service commission correct and factually supported conclusion the Disgruntled Deputy knew the alleged felonies were groundless and that he proceeded to log them for improper purpose and such conduct justified his discharge.

That argument also ignores the language regarding insubordination that states: "Refusing to obey unlawful (criminal or unconstitutional) directives. Mere belief on the part of a member that a directive was

criminal or unconstitutional will not protect a member's job if such belief fails to be established in a later hearing." Sheriff's Ex. 26, §01.05.140 15

A.

The Disgruntled Deputy engages in hyperbole by repeatedly referring to the "larger picture of possible criminal acts by the department", comparing the investigation into how the report was illegally released to an attempt to cover a murder by a departmental employee, "powerless at the collective might of the Dept. to silence him", "unpunished misdeeds and lawlessness of some members of the [Lewis County Sheriff's] Department". Respondents Brief, pg. 45, 39, 40, 42. The Lewis County Civil Service Commission had the opportunity to view the unsubstantiated and frothing rhetoric of the Disgruntled Deputy, properly concluding that when he intended to "bring pressure to bear" on the Sheriff's Office, he did so using a recklessly false claim of witness intimidation which he was advancing for an improper retaliatory purpose because he was upset about a minor disciplinary action.

The Disgruntled Deputy regards the Lewis County Sheriff's Office with such utter and complete disdain that it would be inappropriate to restore his commission. The civil service commission properly concluded that the Disgruntled Deputy could not be rehabilitated and effectively deployed as a commissioned deputy in the Lewis County Sheriff's Office.

That is good cause to uphold the termination decision under RCW 41.14.120.

The Disgruntled Deputy cites a series of cases at Respondent's Brief, pg. 38 that address immunity from suit for lodging complaints. Those cases are inapplicable in a civil service appeal.

Police officers present a special case for concern. We confer vast powers upon them and largely depend upon them for our safety in these difficult times. They are armed and they must make many judgments that affect the rights of numerous citizens each day. They decide whether to stop a driver, or to question a person on the street, or to respond to the scene when a citizen is in danger. They patrol neighborhoods and business areas at night to assure that burglaries and other wrongdoings are kept at as low an ebb as possible. We demand that officers be, and appear to be, trustworthy and honest and that they use their authority wisely. While Sheriff's deputies "are not relegated to a watered-down version of constitutional rights," *Garrity v. New Jersey*, 385 U.S. 493, 87 S.Ct. 616, 620, 17 L.Ed.2d 562 (1967), the fact that they are policemen may affect the meaning of reasonableness when their rights are being considered.

The Sheriff's Rules of Conduct "Enforcement Guidelines" note that where the employer-member relationship is seriously damaged termination is the appropriate sanction. (Sheriff's Ex. 26, pg. 19, ¶19).

Supervisors from Sergeants all the way to the Sheriff indicated that Mr. Sprouse's conduct in this matter has so eroded their trust in his ability to honor the mission and goals of the Lewis County Sheriff's Office that any sanction short of termination would jeopardize order and discipline in the organization and that they lack confidence in Mr. Sprouse's ability to function as a commissioned law enforcement officer. RP 111, 113, 118, 125, 143, 147, 180, 181.

When a law enforcement officer uses their position of authority to retaliate against others by attempting to initiate baseless, criminal charges for their own personal grievance the integrity and mission of the law enforcement agency is threatened. The Lewis County Sheriff's Office's mission "To make a positive difference for members of our community by seeking and finding ways to affirmatively promote, preserve and deliver a feeling of security, safety and quality service" is undermined and thwarted by false allegations of a criminal conspiracy within the Sheriff's Office. Sprouse's continued employment with the Lewis County Sheriff's Office would undermine effective law enforcement operations.

Chief Seiber notes, he determined that Mr. Sprouse's conduct was "a clear retaliation on Mr. Sprouse's part in connection with him receiving recent discipline. He became frustrated with the appeal process and intentionally went outside the agency and caused embarrassment and

damaged the reputation of the [LCSO] and our employees.” (Sheriff’s Ex. 24, pg. 4) (RP 180, lns 13-20). Chief Seiber notes that Mr. Sprouse’s conduct damaged relationships between the LCSO, the State Patrol, Attorney General’s Office, Lewis County Prosecuting Attorney’s Office and the Guild Membership. *Id.*

Chief of Staff, Steve Walton concurred in this assessment. (Sheriff’s Ex. 29) RP 187, 205. The Concerns expressed throughout the chain of command regarding Mr. Sprouse’s vindictive allegations of criminal conduct by the Sheriff’s Administration are succinctly stated in the Lewis County Sheriff’s Offices’ business necessity for the requirement of Standard 19 of the Office’s Twenty-One Uniform Standards of Conduct: “Courteous and Respectful Behavior Toward Positions of Authority:”

Management requires subordinates to display respect and courtesy to higher positions because it provides a sense of order as well as serves as a tangible indication that subordinates are willing to subordinate personal priorities, goals, and objectives to the needs and mission of this Office. *In addition, the willingness and ability of a member to subordinate personal interests and to display respect and courtesy to a supervisor is a reasonable assessment of the member’s capabilities to set aside personal feelings and priorities when dealing with citizens.* (emphasis supplied).

(Sheriff’s Exhibit 26, pg. 15)

Accusing the administration of the Lewis County Sheriff's Office of being a criminal enterprise, engaged in witness tampering and/or witness intimidation made without any factual or legal basis to support that charge and using his position as a deputy sheriff to initiate a baseless criminal investigation, RP 198-99, Sheriff's Ex. 12, into such allegations is grounds for termination. RP 204-05.

III. CONCLUSION

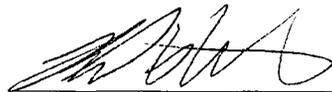
The Lewis County Civil Service Commission correctly determined: "That right [to report a crime], however, does not extend to a vindictive or retaliatory report to the Lewis County Prosecutor's Office that has no basis in fact, and we, after considering all the evidence in the case, have determined that that is what occurred here." Decision After Hearing, pg. 6, lns. 8-11. This Court should reverse the superior court uphold the Lewis County Civil Service decision as having been supported by substantial evidence, made in good faith and for cause.

Returning this Disgruntled Deputy to service as a commissioned officer in the Lewis County Sheriff's Office would irreparably impair order and discipline. The Lewis County Civil Service Commission was in the best position to observe the witnesses and determine the facts, those facts are supported by substantial evidence and the Lewis County Civil

Service Commission decision should be affirmed and the superior court reversed.

Respectfully submitted this 6th day of June 2012.

KRAM & WOOSTER, P.S.

A handwritten signature in black ink, appearing to read 'R. H. Wooster', written over a horizontal line.

Richard H. Wooster, WSBA #13752

APPENDIX

5.8. Civil Service Conflict

5.8.1. With respect to questions of hiring, retention, promotion, and non-timed letters of warning, notwithstanding any provisions of this Agreement to the contrary, in the event of conflict between the provisions of this Agreement and the jurisdiction and rules of the Lewis County Civil Service Commission, the rules and jurisdiction of such Civil Service Commission shall prevail.

5.8.2. In matters involving suspension, demotion and termination, the employee or the Guild may elect to process any dispute or question through either the Lewis County Sheriff Civil Service Commission or through the grievance process outlined in Section 9 of this agreement.

5.8.3. Election of Remedies. When an employee or the Guild submits a dispute to the grievance procedure for resolution or to the Civil Service Commission for review; such submission shall constitute an election of forums and shall prohibit and bar the employee or Guild from proceeding with that matter in the other forum. In no event shall the employee or the Guild submit the same dispute to both the Civil Service Commission and the grievance procedure.

5.9. Special Assignments

5.9.1. All appointments to a special assignment shall be open for employee request for appointment prior to the Sheriff filling or reassigning personnel to the particular assignment. The opening shall be posted for at least fourteen (14) calendar days, unless precluded by operational necessity.

5.10. Civil Liability

5.10.1. Where the employee has acted in good faith and within the scope of employment, and has not willfully committed acts or omissions which are wrongful, the Employer shall provide legal representation for the employee and the employee's marital community in defense of allegations of acts or omissions in the performance of the employee's official duties, and where the Employer has undertaken or should have undertaken representation, the Employer shall pay any monetary judgment awarded against the employee and the employee's marital community.

5.11. Accrued Leave Transfer

5.11.1. Any employee with more than one year of service with the Employer may transfer a portion of their accrued vacation to another employee with one year of completed service with the Employer. This transfer is contingent upon approval of the employee authorizing and the employee receiving the transfer.

FILED
COURT OF APPEALS
DIVISION II
2012 JUN -8 PM 1:11
STATE OF WASHINGTON
BY _____
DEPUTY

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

LEWIS COUNTY CIVIL SERVICE)	Cause No. 42421-5-II
COMMISSION, LEWIS COUNTY)	
SHERIFF'S DEPARTMENT, and LEWIS)	DECLARATION OF
COUNTY,)	SERVICE BY MAIL
)	
Appellants)	
)	
vs.)	
)	
HAROLD SPROUSE,)	
)	
)	
Respondents)	
)	
<hr/>		

KNOW ALL PERSONS BY THESE PRESENTS: That I, Connie DeChaux, the undersigned, of Bonney Lake, in the County of Pierce and State of Washington, have declared and do hereby declare:

That I am not a party to the above-entitled action, am over the age required and competent to be a witness;

That on the 7th day of June, 2012, I placed in the United States Mail with first class postage prepaid an envelope containing the following documents:

1. Reply Brief of Appellant;
2. This Declaration of Service by Mail;

properly addressed to the following person:

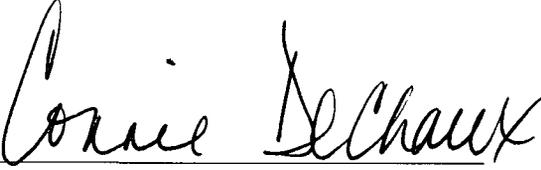
J. David Fine
Lewis County Prosecutor
345 West Main Street 2nd Floor
Chehalis WA 98532

Rick Cordes
2625 B Parkmount Lane SW
Olympia WA 98502

Steven D. Walton
Chief of Staff
Lewis County Sheriff's Office
345 West Main Street
Chehalis, WA 98532-1900

I declare under penalty of perjury under the laws of the State of
Washington and of the United States that the foregoing is true and correct.

Signed at Tacoma, Pierce County, Washington this 7th day of
June, 2012.



Connie DeChaux

Kram & Wooster, Attorneys at Law
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